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provide that July 1, 1996, and July 1, 1997, component rates in nursing services will not be cost rebased but will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-727, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, component rates in food will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, component rates in food will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-735, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, administrative component rates will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, administrative component rates will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-737, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, operational component rates will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, operational component rates will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-745, to remove obsolete references to old biennial system being replaced; to provide for minimum resident occupancy levels of ninety percent and eighty-five percent for nursing facilities, as applicable, for calculating property component rates;

WAC 388-96-753, repealed to delete provisions conflicting with new legislation; subsection not conflicting moved to another section.

WAC 388-96-754, to reflect new minimum nursing facility occupancy levels of ninety percent and eighty-five percent, as applicable, in calculating return on investment rate component; to clarify how current previously-granted current funding in other rate components will be treated in calculating return on investment rate component, consistent with the new legislation.

WAC 388-96-763, to remove obsolete references to the old biennial rate system being replaced, consistent with the new legislation.

WAC 388-96-765, to conform language to clarifying legislative enactment, consistent with new legislation.

WAC 388-96-769, to provide that filing an administrative or judicial review will not delay recovery of payments made to a contractor in error; to provide that the department must pay a contractor amounts owed under errors and omissions within sixty days, consistent with the new legislation.

WAC 388-96-776, to provide that rates for the initial period following new construction requiring state or federal

certificate of need approval or costing in excess of \$1.2 million shall utilize a minimum occupancy of eighty-five percent, consistent with the new legislation.

WAC 388-96-813, to grant the department authority to recoup amounts owed from service payments to a contractor if debts to the department from any source reach or exceed fifty thousand dollars and adequate security is not provided by the contractor; to provide that neither commencement of administrative or judicial review will delay suspension of payment, consistent with the new legislation.

WAC 388-96-901, to prohibit the administrative review process made available to Medicaid nursing facilities from being used to challenge the validity of rules, statutes or contract provisions relating to the Medicaid payment system; to prohibit the process from being used to bring a case under federal law (whether to obtain a ruling on the merits or to make a record for subsequent judicial review); to avoid unnecessary use of state staff resources; to require contractors to bring such cases *de novo* in a court of proper jurisdiction, consistent with the new legislation.

WAC 388-96-902, repealed to eliminate provisions limiting recoupment to undisputed preliminary or final settlement amounts owed the department, consistent with the new legislation which authorizes recoupment of both disputed and undisputed amounts.

WAC 388-96-904, to establish an administrative review procedure, including time frames for each stage, that allows Medicaid nursing facility providers an opportunity to submit evidence and obtain prompt administrative review conducted by the department relating to payment issues, consistent with federal requirements for nursing facility providers in the Medicaid program (42 CFR 447.253(e)); to speed up the process of obtaining final agency and court decisions on Medicaid payment issues affecting nursing facilities; to remove one layer from the current review process (judges employed by the department's office of appeals will conduct the adjudicative proceedings in place of judges of the Office of Administrative Hearings (a separate state agency) and the department judges will render the final agency decision — this will have the effect of eliminating the administrative petition and review decision function currently conducted by the department's office of appeals); to avoid unnecessary use of state staff resources; to allow direct review in state court of payment issues on a stipulated record, consistent with authority granted under the new legislation.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 388-96-216 Deadline for completion of audits, 388-96-753 Return on investment—Effect of funding granted under WAC 388-96-774, 388-96-776, and 388-96-777, and 388-96-902 Recoupment of undisputed overpayments; and amending chapter 388-96 WAC, Nursing home accounting and reimbursement system.

Statutory Authority for Adoption: RCW 74.46.800.

Other Authority: WAC 388-96-010 is E2SHB 1908, section 90; WAC 388-96-032 is E2SHB 1908, section 113; WAC 388-96-108 is E2SHB 1908, section 95; WAC 388-96-204 is E2SHB 1908, section 91; WAC 388-96-210 is E2SHB 1908, sections 98, 99; WAC 388-96-216 is E2SHB 1908, section 91; WAC 388-96-220 is E2SHB 1908, section 93; WAC 388-96-221 is E2SHB 1908, section 94; WAC 388-96-224 is E2SHB 1908, section 94; WAC 388-96-229 is E2SHB 1908, section 95; WAC 388-96-384 is E2SHB 1908, sections

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66, 69; WAC 388-96-501 is E2SHB 1908, section 96; WAC 388-96-585 is E2SHB 1908, section 97; WAC 388-96-704 is E2SHB 1908, sections 98, 99; WAC 388-96-709 is E2SHB 1908, sections 100, 101, 102; WAC 388-96-710 is E2SHB 1908, sections 70, 101; WAC 388-96-713 is E2SHB 1908, sections 98, 99; WAC 388-96-716 is E2SHB 1908, section 100; WAC 388-96-719 is E2SHB 1908, sections 90, 99, 100; WAC 388-96-722 is E2SHB 1908, section 104; WAC 388-96-727 is E2SHB 1908, section 105; WAC 388-96-735 is E2SHB 1908, section 106; WAC 388-96-737 is E2SHB 1908, section 107; WAC 388-96-745 is E2SHB 1908, sections 102, 108; WAC 388-96-753 is E2SHB 1908, section 99; WAC 388-96-754 is E2SHB 1908, section 109; WAC 388-96-763 is E2SHB 1908, section 99; WAC 388-96-765 is E2SHB 1908, section 96; WAC 388-96-769 is E2SHB 1908, section 111; WAC 388-96-776 is E2SHB 1908, section 102; WAC 388-96-813 is E2SHB 1908, section 112; WAC 388-96-901 is E2SHB 1908, section 114; WAC 388-96-902 is E2SHB 1908, section 95; and WAC 388-96-904 is E2SHB 1908, section 115.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Statutory (chapter 74.76 RCW) corresponding to chapter 388-96 WAC has been amended by the state legislature (1995 1st sp. sess.) (E2SHB 1908) changes effective July 1, 1995. The department finds that this state law requires immediate adoption of the following rules effective July 1, 1995.

Effective Date of Rule: July 1, 1995, 12:01 a.m.

June 30, 1995

Jeanette Sevedge-App

Acting Chief

Office of Vendor Services

**AMENDATORY SECTION** (Amending Order 3737, filed 5/26/94, effective 6/26/94)

**WAC 388-96-010 Terms.** Unless the context clearly requires otherwise, the following terms shall have the meaning set forth in this section when used in this chapter.

(1) "Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

- (a) Decision-making;
- (b) Planning;
- (c) Evaluating performance;
- (d) Controlling resources and operations; and
- (e) External financial reporting to investors, creditors, regulatory authorities, and the public.

(2) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when earned, regardless of when collected, and expenses are reported in the period in which incurred, regardless of when paid.

(3) "Administration and management" means activities employed to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

(4) "Allowable costs" - See WAC 388-96-501.

(5) "Ancillary care" means services required by the individual, comprehensive plan of care provided by qualified therapists or by support personnel under their supervision.

(6) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who have adverse bargaining positions in the marketplace.

(a) Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter.

(b) Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(7) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles. "Assets" also include certain deferred charges that are not resources but are recognized and measured in accordance with generally accepted accounting principles.

(8) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(9) "Beds" means, unless otherwise specified, the number of set-up beds in the nursing home, not to exceed the number of licensed beds.

(10) "Beneficial owner" means any person who:

(a) Directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(b) Directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest, or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter.

(c) Subject to subsection (4) of this section, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

Except that, any person who acquires an ownership interest or power specified in subsection (10)(c)(i), (ii), or (iii) of this section with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power.

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(d) In the ordinary course of business, is a pledgee of ownership interest under a written pledge agreement and shall not be deemed the beneficial owner of such pledged ownership interest until the pledgee takes:

(i) Formal steps necessary required to declare a default; and

(ii) Determines the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised provided the pledge agreement:

(A) Is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subsection (10)(b) of this section; and

(B) Prior to default, does not grant the pledgee the power to:

(I) Vote or direct the vote of the pledged ownership interest; or

(II) Dispose or direct the disposition of the pledged ownership interest, other than the grant of such power or powers pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(11) "Capitalization" means the recording of an expenditure as an asset.

(12) "Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

(13) "Cash method of accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

(14) "Change of ownership" means a substitution of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility; or a substitution of control of such operating entity.

(a) Events which constitute a change of ownership include but are not limited to the following:

(i) The form of legal organization of the contractor is changed (e.g., a sole proprietor forms a partnership or corporation);

(ii) Ownership of the nursing home business enterprise is transferred by the contractor to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(iii) If the contractor is a partnership, any event occurs which dissolves the partnership;

(iv) If the contractor is a corporation, and the corporation is dissolved, merges with another corporation which is the survivor, or consolidates with one or more other corporations to form a new corporation;

(v) If the operator is a corporation and, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock is transferred to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having held less than five percent of the stock before the initial transaction; or

(vi) Any other event or combination of events which results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services.

(b) Ownership does not change when the following, without more, occur:

(i) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(ii) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

(15) "Charity allowances" means reductions in charges made by the contractor because of the indigence or medical indigence of a patient.

(16) "Contract" means a contract between the department and a contractor for the delivery of ((SNF or ICF)) nursing facility services to medical care recipients.

(17) "Contractor" means an entity which contracts with the department to deliver ((care)) nursing facility services to medical care recipients in a facility. The entity is responsible for operational decisions.

(18) "Courtesy allowances" means reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

(19) "CSO" means the local community services office of the department.

(20) "Department" means the department of social and health services (DSHS) and employees.

(21) "Depreciation" means the systematic distribution of the cost or other base of tangible assets, less salvage, over the estimated useful life of the assets.

(22) "Donated asset" means an asset the contractor acquired without making any payment for the asset in the form of cash, property, or services.

(a) An asset is not a donated asset if the contractor made even a nominal payment in acquiring the asset.

(b) An asset purchased using donated funds is not a donated asset.

(23) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(24) "Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital as defined in this section.

(25) "Exceptional care recipient" means a medical care recipient determined by the department to require exceptionally heavy care.

(26) "Facility" means a nursing home or facility licensed in accordance with chapter 18.51 RCW, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(27) "Fair market value" means:

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(a) Prior to January 1, 1985, the price for which an asset would have been purchased on the date of acquisition in an arm's-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell; or

(b) Beginning January 1, 1985, the replacement cost of an asset, less observed physical depreciation, on the date the fair market value is determined.

(28) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles and the provisions of chapter 74.46 RCW and this chapter including, but not limited to:

- (a) Balance sheet;
- (b) Statement of operations;
- (c) Statement of changes in financial position; and
- (d) Related notes.

(29) "Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

(30) "Gain on sale" means the actual total sales price of all tangible and intangible nursing home assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

(31) "Generally accepted accounting principles (GAAP)" means accounting principles approved by the financial accounting standards Board (FASB).

(32) "Generally accepted auditing standards (GAAS)" means auditing standards approved by the American Institute of Certified Public Accountants (AICPA).

(33) "Goodwill" means the excess of the price paid for:

- (a) A business over the fair market value of all other identifiable, tangible, and intangible assets acquired; and
- (b) An asset over the fair market value of the asset.

(34) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies.

(35) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(36) "Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

(37) "Joint facility costs" means any costs representing expenses incurred which benefit more than one facility, or one facility and any other entity.

(38) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase

the total lease payment obligation of the lessee shall not be considered modification of a lease term.

(39) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(40) "Medical care recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(41) "Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

(42) "Net book value" means the historical cost of an asset less accumulated depreciation.

(43) "Net invested funds" means the net book value of tangible fixed assets, excluding assets associated with central or home offices or otherwise not on the nursing facility premises, employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles and not in excess of any lids or reimbursement limits set forth in this chapter, plus an allowance for working capital as provided in this chapter.

(44) "Nonadministrative wages and benefits" means wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

(45) "Nonallowable costs" means the same as "unallowable costs."

(46) "Nonrestricted funds" means funds which are not restricted to a specific use by the donor, e.g., general operating funds.

(47) "Nursing facility" means a home, place, or institution, licensed under chapter 18.51 or 70.41 RCW, where ((skilled)) nursing ((and/or intermediate)) care services are delivered.

(48) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(49) "Owner" means a sole proprietor, general or limited partner, or beneficial interest holder of five percent or more of a corporation's outstanding stock.

(50) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form the beneficial ownership takes.

(51) "Patient day" or "resident day" means a calendar day of ((patient)) care provided to a nursing facility resident. In computing calendar days of care, the day of admission is always counted. The day of discharge is counted only when the patient was admitted on the same day. A patient is admitted for purposes of this definition when the patient is assigned a bed and a patient medical record is opened. A "client day" or "recipient day" means a calendar day of care provided to a medical care recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(52) "Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

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(53) "Professionally designated real estate appraiser" means an individual:

- (a) Regularly engaged in the business of providing real estate valuation services for a fee;
- (b) Qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the:
  - (i) Writing of real estate valuation reports;
  - (ii) Passing of written examination on valuation practice and theory; and
  - (iii) Requirement to subscribe and adhere to certain standards of professional practice as the organization prescribes.

(54) "Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients. The rate is used to compute the maximum participation of the department in the contractor's costs.

(55) "Qualified therapist":

(a) An activities specialist having specialized education, training, or at least one year's experience in organizing and conducting structured or group activities;

(b) An audiologist eligible for a certificate of clinical competence in audiology or having the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional, either a qualified therapist or a therapist, approved by the department having specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker graduated from a school of social work;

(f) A speech pathologist eligible for a certificate of clinical competence in speech pathology or having the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW;

(h) An occupational therapist graduated from a program in occupational therapy, or having the equivalent of education or training, and meeting all requirements of state law; or

(i) A respiratory care practitioner certified under chapter 18.89 RCW.

(56) "Rebased rate" or "cost rebased rate" means a facility-specific rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year.

(57) "Recipient" means a medical care recipient.

((57)) (58) "Records" means data supporting all financial statements and cost reports including, but not limited to:

- (a) All general and subsidiary ledgers;
- (b) Books of original entry;
- (c) Invoices;
- (d) Schedules;
- (e) Summaries; and
- (f) Transaction documentation, however maintained.

((58)) (59) "Regression analysis" means a statistical technique through which one can analyze the relationship

between a dependent or criterion variable and a set of independent or predictor variables.

((59)) (60) "Related care" includes:

- (a) The director of nursing services;
- (b) Activities and social services programs;
- (c) Medical and medical records specialists; and
- (d) Consultation provided by:
  - (i) Medical directors;
  - (ii) Pharmacists;
  - (iii) Occupational therapists;
  - (iv) Physical therapists;
  - (v) Speech therapists; and
  - (vi) Other therapists; and
  - (vii) Mental health professionals as defined in law and regulation.

((60)) (61) "Related organization" means an entity under common ownership and/or control, or which has control of or is controlled by, the contractor. Common ownership exists if an entity has a five percent or greater beneficial ownership interest in the contractor and any other entity. Control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution, whether or not the power is legally enforceable and however exercisable or exercised.

((61)) (62) "Relative" includes:

- (a) Spouse;
- (b) Natural parent, child, or sibling;
- (c) Adopted child or adoptive parent;
- (d) Stepparent, stepchild, stepbrother, stepsister;
- (e) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (f) Grandparent or grandchild; and
- (g) Uncle, aunt, nephew, niece, or cousin.

((62)) (63) "Restricted fund" means a fund for which the use of the principal and/or income is restricted by agreement with or direction of the donor to a specific purpose, in contrast to a fund over which the contractor has complete control. Restricted funds generally fall into three categories:

(a) Funds restricted by the donor to specific operating purposes;

(b) Funds restricted by the donor for additions to property, plant, and equipment; and

(c) Endowment funds.

((63)) (64) "Secretary" means the secretary of the department of social and health services (DSHS).

((64)) (65) "Start-up costs" means the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start-up costs include:

- (a) Administrative and nursing salaries;
- (b) Utility costs;
- (c) Taxes;
- (d) Insurance;
- (e) Repairs and maintenance; and
- (f) Training costs.

Start-up costs do not include expenditures for capital assets.

((65)) (66) "Title XIX" means the 1965 amendments to the Social Security Act, P.L. 89-07, as amended.

~~((66))~~ (67) "Unallowable costs" means costs which do not meet every test of an allowable cost.

~~((67))~~ (68) "Uniform chart of accounts" means a list of account titles identified by code numbers established by the department for contractors to use in reporting costs.

~~((68))~~ (69) "Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

~~((69))~~ (70) "Working capital" means total current assets necessary, ordinary, and related to patient care from the most recent cost report minus total current liabilities necessary, ordinary, and related to patient care from the most recent cost report.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION (Amending Order 2270, filed 8/19/85)

**WAC 388-96-032 Termination of contract.** (1) When a contract is terminated for any reason, the old contractor shall submit final reports in accordance with WAC 388-96-104.

(2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts owed to the department, as authorized by chapter 74.46 RCW, regardless of source, including but not limited to, civil fines, third-party liabilities and interest owed the department.

(3) The old contractor shall provide security, in a form deemed adequate by the department, ~~((#))~~ equal to the total amount of determined and estimated overpayments and all other debts owed to the department from any source, whether or not the overpayments or debts are the subject of good-faith dispute. Security shall consist of:

(a) Withheld payments for one or more months of service due the contractor; or

(b) A surety bond issued by a bonding company acceptable to the department; or

(c) An assignment of funds to the department; or

(d) Collateral acceptable to the department; or

(e) A purchaser's assumption of liability for the prior contractor's overpayment; or

(f) A promissory note secured by a deed of trust; or

(g) Any combination of (a), (b), (c), (d), ~~((f))~~ (e), or (f) of this subsection.

(4) A surety bond or assignment of funds shall:

(a) Be at least equal in amount to the total of determined or estimated overpayments and all other debts owed to the department from any source, including interest,

whether or not the subject of good-faith dispute, minus withheld payments;

(b) Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;

(c) Be for a term sufficient to ensure effectiveness after final settlement and the exhaustion of any administrative appeals or exception procedure and judicial remedies, as may be available to and sought by the contractor, regarding payment, settlement, civil fine, interest assessment, or other debt issues: Provided, That the bond or assignment shall initially be for a term of five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining combined overpayment ~~((in dispute))~~ and debt liability as determined by the department.

(d) Provide the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and

(e) Provide that an amount equal to any recovery the department determines is due from the contractor ~~((#))~~ from settlement or from any other source of debt owed to the department, including interest, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund and debt within sixty days following receipt of written demand ~~((or the conclusion of administrative or judicial proceedings to contest settlement issues))~~ for payment from the contractor to the department.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to determined and estimated overpayments and other debt, including interest.

(6) If the total of withheld payments, bonds, and assignments is less than the total of determined and estimated overpayments, the unsecured amount of such overpayments shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including completion of any administrative appeals or exception procedure review of the audit requested by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after all overpayments, erroneous payments and debts determined in connection with final settlement, or otherwise, including accumulated interest owed the department, have been paid by the contractor. ~~((If the contractor contests the settlement determination in accordance with WAC 388-96-224, the department shall hold the security, not to exceed the amount of estimated unrecovered overpayments being contested, pending completion of the administrative appeal process.))~~



(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) The department may accept an assignment of funds if the assignment meets the requirements of subsections (3) and (4) of this section.

(11) ~~((If a contract is terminated solely in order for the same owner to contract with the department to deliver SNF or ICF services to a different class of medical care recipients at the same nursing home, the contractor is not required to submit final reports, and security shall not be required))~~ Regardless of whether a contractor intends to terminate its Medicaid contract or contracts, if a contractor's net Medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars.

(12) Security authorized by subsection (11) of this section shall meet the criteria set forth in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department is authorized to withhold and shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not received. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(13) Subsections (11) and (12) of this section shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover, and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995.

(14) When a contract is terminated, any accumulated liabilities which are assumed by a new owner shall be reversed against the appropriate accounts by the old contractor.

**AMENDATORY SECTION** (Amending Order 2025, filed 9/16/83)

**WAC 388-96-108 Failure to submit final reports.**

(1) If a contract is terminated, the old contractor shall submit a final report as required by WAC 388-96-032(1) and 388-96-104(2). Such final reports must be received by the department within one hundred twenty days after the contract is terminated or prior to the expiration of any department-approved extension granted pursuant to WAC 388-96-107. If a final report is not submitted, all payments made to the contractor relating to the period for which a report has not been received shall be returned to the department within

~~((thirty))~~ sixty days after receiving written demand from the department.

(2) Effective ~~((thirty))~~ sixty days after written demand for payment is received by the contractor, interest will begin to accrue payable to the department on any unpaid balance at the rate of one percent per month.

**AMENDATORY SECTION** (Amending Order 2970, filed 4/17/90, effective 5/18/90)

**WAC 388-96-204 Field audits.** (1) The department shall conduct a field audit of all cost reports for calendar year 1982.

(2) The department may have auditors employed by the department or under contract field audit cost reports for years subsequent to 1982.

(3) Beginning with field audits for calendar year 1983, the department shall audit up to one hundred percent of submitted contractor cost reports and patient care trust fund accounts.

(4) The department may audit any or all schedules of a facility's cost report. The department shall audit the cost ~~((report at least once every three years))~~ reports, receivables and resident trust fund accounts of each nursing facility participating in the Medicaid payment rate system periodically as determined necessary by the department.

(5) Beginning with audits of cost reports, receivables and resident trust fund accounts for calendar year ~~((1983))~~ 1993, facilities selected for audit shall be notified ~~((within one hundred twenty days after submission of a complete and correct cost report))~~ of the department's intent to audit ((Such audits shall be completed within one year after notification of the department's intent to audit unless the contractor fails to allow access to records and documentation or otherwise prevents the audit from being completed in a timely manner)) at least ten working days before commencement of an audit of a facility's cost report or resident trust fund accounts.

(6) To assure the accuracy of cost reports, the department or an auditor under contract with the department may require a contractor to submit for departmental review any underlying financial statements or other records including income tax returns relating to the cost report directly or indirectly.

(7) The department shall audit all submitted contractor cost reports of such facilities as follows:

(a) The department shall audit facilities terminating their Medicaid service contracts with the department when the audits are conducted for the calendar year in which the contract is terminated. Schedule preference will be given to conduct closing audits as soon as possible;

(b) The department shall audit facilities contracting in any given calendar year for that partial or full year, and facilities contracting for the first time for the first full calendar year;

(c) The department shall audit facilities under investigation by the Internal Revenue Service, Securities Exchange Commission, Department of Health and Human Services, Medicaid fraud control unit, or any other federal, state, or municipal agency for alleged fiscal and/or patient account impropriety for:

(i) The year such investigation is commenced;

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- (ii) Each year the investigation is continued;
- (iii) The year the investigation is concluded; and
- (iv) Two full calendar years following the year the investigation is terminated.

(d) The department shall audit facilities that the manager, residential rate program, aging and adult services, requests be audited.

(8) If a facility has a home or central office and such central office or any associated facility meets any of the criteria set forth in subsection (7) of this section, the department shall audit such facility as provided in subsection (7) of this section.

(9) When an audit discloses material discrepancies, undocumented costs, or mishandling of patient trust funds, the department auditors may re-open a maximum of two prior unaudited cost reporting or trust fund periods and/or select future periods for audit in order to discover similar problems, if any, and take appropriate action.

(10) The department may select for audit on a random or other basis reported costs and trust fund accounts of facilities.

**AMENDATORY SECTION** (Amending Order 3634, filed 9/14/93, effective 10/15/93)

**WAC 388-96-210 Scope of field audits.** (1) Auditors will review the contractor's recordkeeping and accounting practices and, where appropriate, make written recommendations for improvements.

(2) The audit will result in a schedule summarizing adjustments to the contractor's cost report whether such adjustments eliminate costs reported or include costs not reported. These adjustments shall include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Auditors will examine the contractor's financial and statistical records to verify that:

(a) Supporting records are in agreement with reported data;

(b) Only those assets, liabilities, and revenue and expense items the department has specified as allowable have been included by the contractor in computing the costs of services provided under its contract;

(c) Allowable costs have been accurately determined and are necessary, ordinary, and related to ~~((patient))~~ resident care;

(d) Related organizations and beneficial ownerships or interests have been correctly disclosed;

(e) Recipient trust funds have been properly maintained; and

(f) The contractor is otherwise in compliance with provisions of this chapter and chapter 74.46 RCW.

(3) In determining allowable costs for each ~~((contractor))~~ nursing facility for each cost report year selected for field audit, auditors shall consider and include in their adjustments, as appropriate, all peer group cost center limit adjustments as provided in subsections (4) and (5) of this section and other desk review adjustments previously made to the reported costs being audited ~~((that is, made to such costs for the purpose of establishing a contractor's July 1 Medicaid rate following the cost report period under audit))~~.

(4) ~~((Beginning with)) For audits of 1992 ((audits, in auditing cost reports for all calendar years ending six months~~

~~before the start of each new biennium)) and 1994 cost reports, auditors shall disallow costs in excess of the nursing facility's peer group median cost plus percentage limit in each cost center without inflating or deflating such limits ((by the IPD Index change used to adjust prospective rates for the first fiscal year of the biennium)) for economic trends and conditions authorized by this chapter, as applicable, for July 1, 1993 and July 1, 1995 prospective rates.~~

(5) ~~((Beginning with)) For audits of 1993 ((audits, in auditing cost reports for all calendar years ending six months after the start of each new biennium)), 1995, and 1996 cost reports auditors shall disallow costs in excess of the nursing facility's peer group median cost plus percentage limit in each cost center, calculated on adjusted cost report data for the ((preceding)) report year ((ending six months prior to the start of the new biennium)) last used to cost-rebase the following July 1 rates but inflated or deflated ((by the IPD Index change used to adjust prospective rates for the first fiscal year of the biennium)) for economic trends and conditions authorized by this chapter, as applicable, for July 1, 1994, July 1, 1996, and July 1, 1997 prospective rates.~~

(6) Auditors will prepare draft audit narratives and summaries and provide them to the contractor before final narratives and summaries are prepared.

**AMENDATORY SECTION** (Amending Order 2025, filed 9/16/83)

**WAC 388-96-220 Principles of settlement.** (1) For each cost center, a settlement shall be calculated at the lower of prospective reimbursement rate or audited allowable costs, except as otherwise provided in this chapter.

(2) Each contractor shall complete a proposed preliminary settlement by cost center as part of the annual cost report and submit it by the due date of the annual cost report. After review of the proposed preliminary settlement, the department shall issue by cost center a preliminary settlement report to the contractor.

(3) If a field audit is conducted, the audit findings shall be evaluated by the department after completion of the audit ~~((and)), including exhaustion or termination of any administrative review requested by the contractor, but not judicial review as may be available to and commenced by the contractor. A final settlement by cost center, including any allowable shifting or cost savings, shall then be issued which takes account of such findings and evaluations.~~

(4) Pursuant to preliminary or final settlement and the procedures set forth in this chapter, the contractor shall refund overpayments to the department and the department shall pay underpayments to the contractor.

**AMENDATORY SECTION** (Amending Order 3737, filed 5/26/94, effective 6/26/94)

**WAC 388-96-221 Preliminary settlement.** (1) In the proposed preliminary settlement submitted under WAC 388-96-220(2), a contractor shall compare the prospective rates at which the contractor was paid during the report period, weighted by the number of patient days reported for the period each rate was in effect, to the contractor's allowable costs for the reporting period. The contractor shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis.



(2) Within one hundred twenty days after a proposed preliminary settlement is received, the department shall:

(a) Review proposed preliminary settlement for accuracy, and

(b) Either accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement shall become the preliminary settlement report. If rejected, the department shall issue, by cost center, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(3) A contractor shall have ~~((thirty))~~ twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the ~~((thirty))~~ twenty-eight-day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine rate or audit issues.

(4) If no audit is scheduled by the department or if a scheduled audit is not performed within two years of the scheduled date, the department shall perform the preliminary settlement review described in this section with the following exceptions:

(a) For cost centers, the department shall:

(i) Use desk-reviewed costs as the contractor's allowable costs for the reporting period;

(ii) Disallow all costs in excess of the nursing facility's peer group median cost limit as described under WAC 388-96-210; and

(iii) For 1992 and 1993 settlements only, nursing facilities qualifying for the nursing services exception described in WAC 388-96-722(9) will have their 1992 and 1993 nursing services costs limited by the product of their 1992 or 1993 total days, respectively, times their June 30, 1993 nursing services rate.

(b) The department shall calculate the variable portion of return on investment as calculated in the prospective rate;

(c) The department shall base the financing allowance portion of return on investment on audited costs in compliance with provisions contained in this chapter. If audited costs are not available, the department shall use the financing allowance used for rate setting. If an audited financing allowance is later determined, the department shall revise the final settlement to reflect audited financing allowance if payment is changed by \$1,000 or more; and

(d) When a complete audit was not performed and audited information is needed for purposes of calculating return on investment, the department may do a partial audit of current or prior year cost report.

(5) Beginning with preliminary settlements for report year 1988, if the department intends to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon reported costs. If the department does not intend to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon desk-reviewed costs utilizing the procedure under subsection (4) of this section.

(6) If the facility prevents, hinders, or otherwise delays completion of a full field audit, that facility's preliminary

settlement issued on reported costs may be reopened to substitute desk-reviewed costs.

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

**WAC 388-96-224 Final settlement.** (1) If an audit is conducted, the department shall issue a final settlement report to the contractor after completion of the audit process, including exhaustion or ~~((mutual))~~ termination of any administrative review(s) and appeal(s) of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor. The department shall prepare the final settlement by cost center and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. For the final settlement report, the department shall compare:

(a) The prospective rate the contractor was paid for the facility in question during the report period, weighted by the number of ~~((patient))~~ resident days reported for the period each rate was in effect as verified by audit, to

(b) The contractor's audited allowable costs for the reporting period.

The department shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis. ~~((If the contractor is pursuing in good faith an administrative or judicial review or appeal of audit findings or determinations, the department may issue a partial final settlement report in order to recover overpayments based on audit findings or determinations not in dispute on review or appeal.~~

~~((2))~~ (2) For the 1981 cost report period, the department shall issue one settlement for the year composed of two parts:

(a) One relating to January 1, 1981, through June 30, 1981; and

(b) One relating to July 1, 1981, through December 31, 1981.

~~((3))~~ (3) For the first six months of 1981, the department shall compute the settlement in accordance with the court order and agreement between the department and Medicaid contractors for the UNH II and III period (January 1, 1978, through June 30, 1981).

~~((4))~~ (4) For the second six months of 1981, the department shall compute the settlement in accordance with principles and instructions contained in regulations applicable to 1981 settlements, except for the requirement that a settlement cover an entire cost report year.

~~((5))~~ (2) A contractor shall have ~~((thirty))~~ twenty-eight days after receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the ~~((thirty))~~ twenty-eight-day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine rate or audit issues.

~~((6))~~ (3) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from an audit performed pursuant to RCW 74.46.105. The department may also reopen a final settle-



ment to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medical care recipients, pursuant to RCW 74.46.180(5).

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

WAC 388-96-229 Procedures for overpayments and underpayments. (1) Within sixty days after the preliminary or final settlement is received by the contractor, the department shall make payment of underpayments to which a contractor is entitled as determined by ((preliminary or final settlement within thirty days after the preliminary or final settlement report is submitted to the contractor)) the department under the provisions of chapter 74.46 RCW and this chapter.

(2) The department shall pay interest to a contractor at the rate of one percent per month on any preliminary or final settlement balance still due the contractor sixty days after the contractor receives the preliminary or final settlement. Interest shall commence to accrue after such sixty-day period and no interest shall accrue or be paid to a contractor prior to this date. Any increase in a preliminary or final settlement amount due a contractor resulting from a final administrative or judicial decision shall also bear interest until paid at the rate of one percent per month, accruing from sixty days after the preliminary or final settlement was received by the contractor. The department shall pay no interest on amounts due a contractor other than amounts determined by preliminary or final settlement as authorized by this subsection.

(3) A contractor found, under a preliminary or final settlement issued by the department, to have received overpayments or payments in error, as determined by ((preliminary or final settlement)) the department pursuant to the provisions of chapter 74.46 RCW and this chapter, shall refund such payments to the department within ((thirty)) sixty days after receipt of the preliminary or final settlement report as applicable. Contractors shall refund to the department funds reimbursed in the enhancement cost center, but not spent in the legislatively authorized manner. For all preliminary or final settlements issued on and after July 1, 1995, regardless of what period a settlement covers, neither a timely-filed request to pursue administrative review as provided in this chapter nor commencement of judicial review, as may be available to a contractor in law, contesting the settlement, erroneous payments or underpayments shall delay recovery of amounts due the department by any authorized means, including recoupment from current payments due a contractor.

~~((2))~~ (4) If a contractor fails to ((empty with subsection (2) of this section)) make repayment of amounts due the department as determined by preliminary or final settlement, the department shall:

(a) Deduct from current monthly amounts due the contractor the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month; or

(b) If the contract has been terminated:

(i) Deduct from any amounts due the old contractor the refund due the department and accrued interest as authorized

in this section on the unpaid balance at the rate of one percent per month; ((or))

(ii) Recover the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month from security posted by the old contractor or otherwise obtained by the department; and/or

(iii) Pursue, as authorized by law and regulation, recovery of the refund due and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month.

~~((4) A facility pursuing a timely filed administrative or judicial remedy in good faith regarding a proposed settlement report need not refund overpayments.))~~

(5) A contractor shall pay interest to the department at the rate of one percent per month on any preliminary or final settlement balance still due the department at the expiration of sixty days after the contractor receives the preliminary or final settlement. Interest shall commence to accrue after such sixty-day period and no interest shall accrue or be paid to the department prior to this date. The department shall adjust interest owed by a contractor or refund all or a portion of interest collected from the contractor, as applicable, in the event a final administrative or judicial decision reduces or eliminates a preliminary or final settlement amount owed by the contractor.

(6) For all erroneous payments and overpayments determined by preliminary or final settlements issued before July 1, 1995:

(a) The department shall not withhold from current amounts due the facility any refund or interest the department claims to be due from the facility, provided the refund is specifically disputed by the contractor on review or appeal((-));

(b) Portions of refunds due the department, not specifically disputed by the contractor on review or appeal, are subject to recovery thirty days after the preliminary or final settlement is received by the contractor and assessment of interest ((as provided in subsection (2) of this section)) at the rate of one percent per month on any unpaid balance accruing thirty days after the preliminary or final settlement report is received by the contractor until paid in full; and

(c) If the administrative or judicial remedy sought by the facility is not granted or is granted only in part after exhaustion or mutual termination of all appeals, the facility shall refund all amounts due the department within sixty days after the date of decision or termination plus interest as payable on judgments from the date the review was requested pursuant to WAC 388-96-901 and 388-96-904 to the date the repayment is made.

AMENDATORY SECTION (Amending Order 3070, filed 9/28/90, effective 10/1/90)

WAC 388-96-384 Liquidation or transfer of resident personal funds. (1) Upon the death of a resident, the facility shall promptly convey the resident's personal funds held by the facility with a final accounting of such funds to the department or to the individual or probate jurisdiction administering the resident's estate.

(a) If the deceased resident was a recipient of long-term care services paid for in whole or in part by the state of

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